

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
DOREEN LYNN BAILER,) CASE NO. 05-69282 JPK
) Chapter 7
Debtor.)

ORDER REGARDING REQUEST FOR WAIVER
OF CREDIT COUNSELING

This case was initiated by voluntary petition filed on November 18, 2005. On November 18, 2005, the debtor filed a Request to Waive Budget and Credit Counseling.

There are two separate credit counseling requirements under the Bankruptcy Code. The first, stated in 11 U.S.C. § 109(h)(1), relates to an individual debtor's eligibility for bankruptcy relief. The second, stated in 11 U.S.C. § 727(a)(11) and 11 U.S.C. § 1328(g), provides that a condition of the Court's granting an individual debtor a discharge under Chapters 7 and 13, respectively, is that the debtor have completed "an instructional course concerning personal financial management described in section 111 [11 U.S.C. § 111]".

With respect to the initial credit counseling provided for by 11 U.S.C. § 109(h), the statute specifies the circumstances under which a debtor may be excused from the requirement of the initial pre-petition counseling and still maintain eligibility to be a debtor despite the lack of receiving that counseling.

The first excepted circumstance is stated in 11 U.S.C. § 109(h)(2); that circumstance only arises if the United States Trustee has not approved any nonprofit budget and credit counseling agencies for the district in which the case is filed. This exception does not apply in the United States Bankruptcy Court for the Northern District of Indiana: the United States Trustee has approved agencies with respect to this District.

The second exception, stated in 11 U.S.C. § 109(h)(3), provides that the debtor may be eligible for bankruptcy relief despite not having obtained the required credit counseling prior to

the filing of the petition **if** the debtor submits a **certification** to the Court that satisfies all three of the following conditions:

- (i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);
- (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and
- (iii) is satisfactory to the court.

The third exception, stated in 11 U.S.C. § 109(h)(4), excuses compliance with the pre-petition counseling requirement "with respect to a debtor whom the Court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone"; the words "incapacity" and "disability" are defined by the statute in relatively strict terms.

As the foregoing statutes make clear, the only complete waiver applicable to the United States Bankruptcy Court for the Northern District of Indiana is that described in 11 U.S.C. § 109(h)(4). The provisions of 11 U.S.C. § 109(h)(3) do not provide for a waiver of the requirement, but merely a deferral of no longer than 45 days after the filing of the petition **if** the Court determines that the requirements of that section have been satisfied.

Fed.R.Bankr.P. 9013 states in pertinent part the following:

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. (emphasis supplied).

The foregoing rule is supplemented by N.D.Ind.L.B.R. B-9013-1(a), as follows:

- (a) Every application, motion, or other request for an order from the court, including motions initiating contested matters, shall be filed separately, except that requests for alternative relief may be filed together. All such requests shall be named in the caption, shall state with particularity the order or relief sought and contain

a short and plain statement concerning the factual basis or grounds for the motion. (emphasis supplied).

The Debtor's Request in this case states no grounds upon which any deferral provided by 11 U.S.C. § 109(h)(3) can be based. The Request does not certify that the debtor has met the condition imposed by 11 U.S.C. § 109(h)(3)(A)(ii), and in addition, the stated reason for requesting even the limited grace period provided by § 109(h)(3) does not describe an "exigent circumstance" within the meaning of 11 U.S.C. § 109(h)(3)(A). No grounds are stated under 11 U.S.C. § 109(h)(4).

The Court has absolutely no discretion to depart from the requirements of the law and must enforce the law according to the terms of the foregoing statutes. Based upon the foregoing, the Court finds that the debtor's request for waiver/deferral with respect to the requirements of 11 U.S.C. § 109(h)(1) must be denied. Because matters relating to the granting of the debtor's discharge are not before the Court, any review of the requirements of 11 U.S.C. § 727(a)(11) or of 11 U.S.C. § 1328(g) with respect to this case cannot be undertaken; the Court notes that the only exemption available in the United States Bankruptcy Court for the Northern District of Indiana with respect to that section is that provided by 11 U.S.C. § 109(h)(4).

IT IS ORDERED that the Debtor's Request is denied.

Dated at Hammond, Indiana on November 30, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor
Trustee, US Trustee